IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3160 OF 2003

Suka Bala Naik through LRs. Petitioners

versus

Deoram Baburao Bombale & ors. Respondents

Mr.Uday Warunjikar for petitioner.

None for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 23rd January 2006

PC :

1. Heard Shri Warunjikar for petitioner. Although the office remark is "respondents 1 to 9 and 11 are served" none appears on their behalf. The writ petition is dismissed for want of prosecution against respondent no.10. The original petitioner has expired during pendency of this petition and his heirs have been brought on record by amendment and permission is granted by this Court to carry out the same. The petitioners are aggrieved by an order dated 18th July 2002 in Civil Miscellaneous Appeal No.35 of

2001 dismissing the appeal of the original appellant-petitioner before Appellate Court to challenge an order passed by the Trial Court on an application for injunction in Regular Civil Suit No.269 of 2000 pending on the file of Joint Civil Judge, Junior Division, Niphad.

2. My attention is invited by Shri Warunjikar to the ad-interim order granted in the Trial Court and the submission is that it is on the basis of shares of the parties in the suit land. That would not have prejudiced any of the defendants in the submission of Shri Warunjikar because that was based upon the documents which were placed on record. However, the Trial Court as well as the Lower Appellate Court after observing that the petitioner-original applicant has not approached the Court with clean hands and relying upon the consolidation scheme and 7/12 extracts, rendered a finding that there was a partition between the parties and both lands divided in 1/2 share are in the possession of the original defendants. It is on that basis that the Court below observed that the petitioner-original applicant (plaintiff) is taking advantage of his name in the original record and trying to grab the whole land.

3. Learned advocate for the petitioner submits that this prima facie finding is erroneous because the original plaintiff was also seeking an alternate relief pertaining to his shares as is discernible and apparent from the documents which are placed on record.

4. In my view, much water has flown inasmuch the original plaintiff also has expired. His heirs are pursuing this petition. The suit is pending since 2000 and the interlocutory orders therein are of the year 2002. In the interest of justice, therefore, it is desirable that the hearing of the suit is expedited. It is accordingly expedited. The Trial Court shall endeavour to dispose of the same by end of August 2006. The Trial Court also to consider an application, if made by the petitioners (heirs of the original plaintiff), for modification of the interim order or appropriate interim directions on it’s own merits and in accordance with law and uninfluenced by the prima facie findings recorded in the orders passed on 23rd December 2001 and 18th July 2002. Petition disposed of.

(S.C.DHARMADHIKARI, J.)